



Federal Communications Commission
Washington, D.C. 20554
December 23, 1998

IN REPLY REFER TO:
9808462

The Honorable Richard J. Durbin
United States Senate
364 Russell Senate Office Building
Washington, D.C. 20510-1304

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Senator Durbin:

This is in response to your letter on behalf of your constituent, Nancy A. Dietrich, regarding wireless phones and the Commission's implementation of Section 255 of the Communications Act (Section 255), added by the Telecommunications Act of 1996. Section 255 requires that telecommunications equipment manufacturers and service providers must ensure that their equipment and services are accessible to persons with disabilities, to the extent that it is readily achievable to do so. When equipment or services cannot readily be made accessible, the statute requires that they be "compatible with existing peripheral devices or specialized customer premises equipment," again on the condition that such compatibility is readily achievable. In adopting Section 255, Congress gave the Commission two specific responsibilities, to exercise exclusive jurisdiction with respect to any complaint filed under Section 255, and to coordinate with the Architectural and Transportation Barriers Compliance Board (Access Board) in developing guidelines for the accessibility of telecommunications equipment and customer premises equipment.

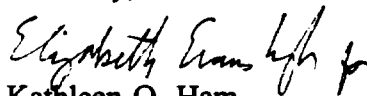
The Commission adopted a Notice of Inquiry in September 1996, initiating WT Docket 96-198 and seeking public comment on a range of general issues central to the Commission's implementation of Section 255. The Commission also adopted a Notice of Proposed Rule Making (NPRM) in April 1998, which sought public comment on a proposed framework for that implementation. The NPRM examined the Commission's legal authority to establish rules implementing Section 255, including the relationship between the Commission's authority under Section 255 and the guidelines established by the Access Board in February 1998. The NPRM further solicited comment on the interpretation of specific statutory terms that are used in Section 255, including certain aspects of the term "readily achievable," and the scope of the term "telecommunications services." In addition, the NPRM sought comment on proposals to implement and enforce the requirement that telecommunications equipment and services be made accessible to the extent readily achievable. The centerpiece of these proposals was a "fast-track" process designed to resolve many accessibility problems informally, providing consumers with quick solutions.

I would like to respond to Ms. Dietrich's specific complaint regarding the apparent incompatibility between hearing aids and some wireless handsets, which also raises another statutory provision. Under the Hearing Aid Compatibility Act of 1988 (HAC Act), telephones

were required to be "internally compatible" with certain hearing aids that have telecoils, but Congress initially exempted wireless telephones from that requirement. The HAC Act recognized that evolving wireless communications technology might not be consistent with the application of the internal compatibility requirement to manufacturers of wireless telephones. In contrast to the HAC Act, Section 255 is not limited in scope to "internal compatibility" measures; nor does it establish an initial exemption for wireless telephones or services.

With respect to the Section 255 NPRM, it is important to note that the Commission has not issued a final decision regarding any of the proposals suggested in the NPRM. The record in this proceeding closed on August 14, 1998, and the Commission staff is currently reviewing public comments. Since the passage of Section 255, the Commission has worked closely with the Access Board and with various commenters to design an implementation framework that best reflects the intent of Congress in adopting Section 255. Mr. Cook's comments will be included as an informal comment in the record of WT Docket 96-198, and carefully considered, along with the many other comments, before final action is taken on this critically important matter. I appreciate Ms. Dietrich's input as a way of establishing as thorough and representative a record as possible on which to base final rules implementing Section 255.

Sincerely,

A handwritten signature in dark ink, appearing to read "Elizabeth Evans" followed by a stylized flourish or initials.

Kathleen O. Ham

Deputy Chief, Wireless Telecommunications Bureau

RICHARD J. DURBIN
ILLINOIS
COMMITTEE ON THE JUDICIARY
COMMITTEE ON
GOVERNMENTAL AFFAIRS
COMMITTEE ON THE BUDGET

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November 12, 1998

Ms. Cheryl Wilkerson
Director, Office of Legislative &
Intergovernmental Affairs
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

Dear Ms. Wilkerson:

Enclosed please find copies of letters I received from my constituents, Ms. Nancy Dietrich, ~~Mr. Robert Griffith~~, ~~Mr. Theodore Huber~~ and ~~Ms. Leneah Livallor~~. They contacted me about the FCC's notice of proposed rulemaking regarding changes to Section 255 of the Telecommunications Act of 1996. They are concerned that the notice indicates the FCC "is undermining Congressional intent to make telecommunications equipment and services accessible to people with disabilities as called for in Section 255."

I would encourage you to take my constituents' comments under full consideration as you deliberate implementing this rulemaking. Please send a copy of your response directly to the three constituents and send a copy to Maureen Mahon of my Judiciary Committee staff.

Thank you for your attention to this matter.

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LEGISLATIVE AFFAIRS
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Sincerely,



Richard J. Durbin
United States Senator

Enclosures

RJD/mtm

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NANCY A. DIETRICH
2621 BROOKFIELD COURT
COLUMBIA, IL 62236-2620
June 25, 1998

The Honorable Richard Durkin
U. S. Senate
Washington, DC 20510

Dear Mr. Durkin:

Re FCC Notice of Proposed Rulemaking On
the Access Provisions of the Telecommu-
nications Act of 1996

I have severe hearing loss and wear two hearing aids with telecoil. I would like to express my concerns regarding FCC's notice. FCC is undermining Congressional intent to make telecommunications equipment and services accessible to people with disabilities as called for in Section 255 of the Telecommunications Act of 1996.

It appears that FCC may not apply the Access Board guidelines (published on February 3, 1998) to service providers. I'm concerned about this and feel that the guidelines should apply to both manufacturers and service providers. I feel that definitive wording to that effect is needed to ensure that service providers and manufacturers clearly understand their access responsibilities in their design of new equipment.

I'm still searching for a wireless phone that is compatible with my hearing aids. Six times I had an emergency and had a need for such phone. I feel that all phones and service should be accessible, thus becoming beneficial to everyone, disabled or not.

The Act provides that a company's obligation to make products accessible, if they are "readily achievable". However, FCC is deviating from the readily achievable standard to the concept of "cost recovery". I don't feel that a manufacturer or provider should be allowed to consider whether or not it will recover costs of increased accessibility in its assessment of the readily achievable standards. If the cost recovery concept is adopted, the concept of accessibility in our society would be undermined.

For example, because telecoils were not mandated for cellular phones, most analog cell phones still don't have telecoils for hearing aid users. See above indented paragraph regarding my experiences with emergencies. I want to be able to use a cellular phone just like everyone else.

I'm concerned about FCC's omission of "enhanced services" from the coverage under Section 255, especially voice mail and automated voice response systems. I've been frustrated in dealing with complicated, fast moving automated response systems when I use voice telephones. Sometimes when I use TTY relay service to call a company, the relay operator doesn't have sufficient time to type the choice and have me respond. The operator would try one or two more times to complete critical calls.

Even calling Boston Pops long distance to follow up on the ticket order was a disaster. I ended up, having to write, thus losing valuable time!

Leaving out "enhanced services" will severely limit educational and employment opportunities and interferes with full participation in today's society.

I recall my experience with voice mail at work and was not able to put my phone on voice mail. I had a terrible time hearing voice mail when I made calls to my associates or other employees at the office. That kept me from completely performing my duties and I had to rely on others to help me with the calls.

The Honorable Richard Durkin
June 25, 1998
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I urge you to contact the Chairman of the FCC, William E. Kennard, about my concerns.

Thank you for your time.

Sincerely yours,

Nancy K. L. L. L.